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Wheaton Sanitary District

Request for Declaratory Ruling Concerning
the Underground Facilities Damage
Prevention Act (220 ILCS 50)

No. 02-0345

REQUEST FOR DECLARATORY RULING

The WHEATON SANITARY DISTRICT ("WSD"), by and through its Attorneys, PEREGRINE, STIME, NEWMAN, RITZMAN & BRUCKNER, LTD., seeks a declaratory ruling from the Illinois Commerce Commission pursuant to 83 Ill. Adm. Code Section 200.220.

The ruling sought by WSD is that sanitary districts are not required to participate in the State-Wide One-Call Notice System ("System") encompassed within the Illinois Underground Utility Facilities Damage Prevention Act ("Act").

While WSD respectfully submits that it is not required to participate in the System, the potential for penalties and fines for non-compliance supports WSD's request for a declaratory ruling.

I. The Act Does Not Require Sanitary District Participation

The Act (Section 3) requires all owners or operators of "underground utility facilities" to participate in the System. The Act defines "underground utility facilities" as those installed by

certain categories of entities.¹ More specifically, the Act states:

"Sec. 2.2. Underground utility facilities. "Underground utility facilities" or "facilities" means and includes wires, ducts, fiber optic cable, conduits, pipes, sewers, and cables and their connected appurtenances installed beneath the surface of the ground by a public utility (as is defined in the Illinois Public Utilities Act, as amended), or by a municipally owned or mutually owned utility providing a similar utility service, except an electric cooperative as defined in the Illinois Public Utilities Act, as amended, or by a pipeline entity transporting gases, crude oil, petroleum products, or other hydrocarbon materials within the State or by a telecommunications carrier as defined in the Universal Telephone Service Protection Law of 1985, or by a company described in Section 1 of "An Act relating to the powers, duties and property of telephone companies", approved May 16, 1903, as amended, or by a community antenna television system, hereinafter referred to as "CATS", as defined in the Illinois Municipal Code, as amended." (Text of section after amendment by P.A. 92-179, effective 7/1/02). (Emphasis added).

Of these "underground utility facilities" there are only three categories which conceivably could include sanitary districts, i.e.:

1. Public utilities, as defined in the Illinois Public Utilities Act;
2. Municipally owned utilities;
3. Mutually owned utilities.

Sanitary districts do not fall under any of these three categories.

¹ When a statute defines the terms it uses, those terms must be construed according to the definitions contained in the act. State Farm Mut. Auto Ins. Co. v. Universal Underwriters Group, 231 Ill. Dec. 75, 695 N.E.2d 848, 182 Ill 240 (1998).

A. Sanitary Districts are not Public Utilities

The first category of "underground facilities" covered by the Act are those installed by "public utilities" as defined in the Public Utilities Act. In defining "public utilities" the relevant statutory language excludes certain categories, i.e:

"Public utility" does not include, however: (1) public utilities that are owned and operated by any political subdivision, political institution of higher education, or municipal corporation of the state, or public utilities that are owned by such political subdivision, political institution of higher education, or municipal corporation and operated by any of its lessees or operating agents; (220 ILCS 5/3-105). (Emphasis added).

Excluded from the category of "public utility" are facilities owned and operated by "any political subdivision." A "political subdivision" is a term that encompasses "division[s] of the state made by proper authorities thereof, acting within their constitutional powers, for the purpose of carrying out a portion of those functions of the state which by long usage and inherent necessities of government have always been regarded as public." Black's Law Dictionary (5th ed. 1983). More specifically, Illinois law states that "it is clear that a political subdivision cannot be restricted to mean a municipality but also applies to other governing bodies such as districts." In Re Village of Godfrey, 243 Ill. App.3d 915, 921, 612 N.E.2d 870, 875, 183 Ill. Dec. 943, 947 (5th Dist. 1993).

Sanitary districts are political subdivisions of the State and thus are excluded from being "public utilities" pursuant to the language of the Act.

B. Sanitary Districts are not Municipally Owned Utilities

The second category of "underground facilities" excluded from the Act are "municipally owned utilities." Article VII, Section 1 of the Illinois Constitution defines "municipalities" as cities,

villages, and incorporated towns. By contrast, sanitary districts are defined as "units of local government" under Article VII, Section 8 of the Constitution. Furthermore, sanitary districts are created under and governed by the Special Districts chapter of the Illinois Compiled Statutes (Chapter 70), not the Municipal chapter (Chapter 65). It is clear that sanitary districts are not "municipalities" under Illinois law.

WSD also notes that the Sanitary District Act of 1917 under which WSD was created acknowledges the difference between "municipalities" and "units of local government" (70 ILCS 2405/1). Further, Section 14 of the Act preempts home rule power by indicating that "all units of local government including home rule units must comply with the provisions of this Act." This wording recognizes that "units of local government" cover a different group of entities than "municipalities." If the Legislature intended Section 2.2 of the Act to apply to underground facilities installed by sanitary districts (or other units of local government), it would have so stated. Instead, the legislature decided to limit its applicability to those entities and facilities explicitly identified in Section 2.2. To read the statute any other way would violate the rule of statutory construction which requires the statute be read as a whole with each word, clause and section being attributed with meaning so as to avoid rendering any part of the statute as being superfluous. Roser v. Anderson, 222 Ill. App.3d 1071, 165 Ill. Dec. 431, 584 N.E.2d 865 (1991).

Care should be taken when reading Section 14. It does not supercede, expand, or alter the other provisions of the act. The language in Section 14 simply means that all units of local government must comply with the Act in accordance with the provisions of the Act and are prohibited from using their Home Rule Powers (if any) to establish varying regulations. Under the Act, sanitary districts are not covered.

In the Act, the Legislature limited applicability to those entities and facilities explicitly identified in Section 2.2, i.e.:

1. Public utilities, as defined in the Illinois Public Utilities Act;
2. Municipally owned utilities;
3. Mutually owned utilities.

C. Sanitary Districts Are Not Mutually Owned Utilities

The third category of underground facilities encompassed by the Act are "mutually owned utilities." A mutually owned organization is a type of entity where members act as owner-patrons. Examples of such entities are cooperatively owned water systems and certain credit unions. Sanitary districts, by contrast, are political subdivisions of the state, not mutually owned utilities.

II. Conclusion

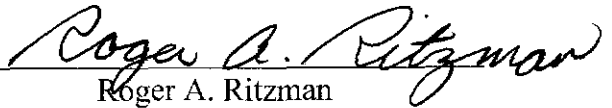
A well established rule of statutory construction is that a statute must be construed as it is and may not, under the guise of construction, supply omissions, remedy defects, annex new provisions, substitute different provisions, add new exceptions, limitations or conditions or otherwise change the law so as to depart from the plain meaning of the language of the Statute. Toys "R" Us, Inc. v. Adelman, 158 Ill. Dec. 935, 574 N.E.2d 1328, 215 Ill. App.3d 561 (3rd Dist. 1991, appeal denied 580 N.E.2d 136). Only those entities found in Section 2.2 of the Act are required to participate in the System. Sanitary districts are neither public utilities nor municipally owned utilities nor mutually owned utilities.

WSD seeks a declaratory ruling from the Illinois Commerce Commission that the Illinois Underground Facilities Damage Prevention Act does not require sanitary districts to participate in the System.

Respectfully Submitted,

WHEATON SANITARY DISTRICT

BY: PEREGRINE, STIME, NEWMAN,
RITZMAN & BRUCKNER, LTD.

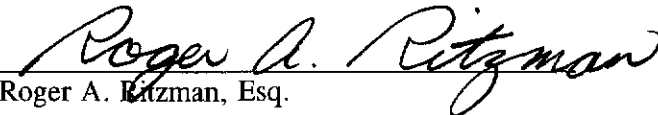
By: 
Roger A. Ritzman

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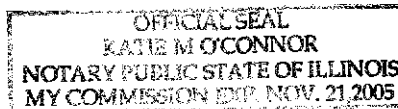
VERIFICATION BY CERTIFICATION

Roger A. Ritzman, being first duly sworn on oath, deposes and states that he is the attorney for Wheaton Sanitary District in the above-captioned matter, and that he read the foregoing document, and that the statements made herein are true, correct and complete to the best of his knowledge and belief.


Roger A. Ritzman, Esq.

SUBSCRIBED and **SWORN** to before
me this 16th day of May, 2002.


NOTARY PUBLIC



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